

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

ROOSEVELT CARTER,

§

v.

§

C.A. NO. C-07-114

NATHANIEL QUARTERMAN.

§

**ORDER DENYING PETITIONER'S  
MOTION FOR AN EVIDENTIARY HEARING**

Petitioner is a state inmate currently incarcerated at the Terrell Unit in Rosharon, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 11).

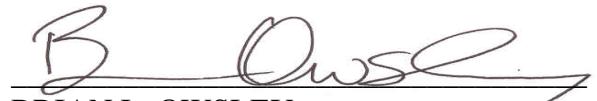
Rule 8(a) of the Rules Governing Section 2254 Cases states that “[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.” Rule 8(c) further requires that “[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare.” The Fifth Circuit has explained that “[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute.” Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815 (5th Cir. 2000) (discussing basis for evidentiary hearing).

Petitioner is challenging his conviction on October 19, 2005 in the 156th Judicial District Court in Live Oak County, Texas for possession of marijuana. (D.E. 1, at 2). On March 19, 2007, a memorandum and recommendation was issued recommending the denial of petitioner's motion to proceed *in forma pauperis*. (D.E. 9). Because petitioner has neither paid the filing fee, nor been granted leave to proceed *in forma pauperis*, an order for service of process has not

been issued yet. Accordingly, an evidentiary hearing is premature.

Accordingly, petitioner's motion for an evidentiary hearing, (D.E. 11), is hereby DENIED without prejudice.

ORDERED this 22nd day of March 2007.

  
BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE